THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.5595 of 2005

Date: September, 2007

Between :-

V.N.Subhash Chandra Bose .. Petitioner

And

The Chief Manager, Andhra Bank,
S.R.Nagar Branch, Hyderabad
And 2 others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.5595 of 2005

ORDER:-

V.N.Subhash Chandra Bose, the writ petitioner filed the present Writ Petition for a Writ of Mandamus declaring the action of the respondent No.1 in transferring the entire amount of Rs.4,02,434/- from the petitioner's Savings Bank Account bearing SB No.506852 to various other accounts as arbitrary, illegal and violative of petitioner's fundamental rights guaranteed to him under Article 226 of Constitution of India in the interest of Justice and to pass such other suitable orders.

2. It is stated that by the petitioner that *the petitioner is having following Accounts with the Andhra Bank, S.R.Nagar Branch, Hyderabad:-*

1. *Savings Bank Account SB No.506852*
   In this account, the petitioner had cash to the tune of Rs.4,02,434/- and to his utter surprise and astonishment, R.1 without any permission from him, without issuing any show cause notice and without his knowledge had transferred his entire amount of Rs.4,02,434/- to the following Accounts.
2. *CA/01/00007056 – Roopa Informatics Limited – Amount transferred from the petitioner's SB Account: Rs.3,07,476/-.*

It is stated that in this Firm, the petitioner is only a Director but an amount of Rs.3,07,476/- has been transferred from petitioner's SB Account to this account towards interest on 1-3-2005.

3. *HL/01/00000014 – Housing Loan Account – Amount transferred from the petitioner's SB Account: Rs.54,010/-.*
4. *CL/01/20040053 – Clean Loan Account of Kolluri Rajini i.e., petitioner's wife – Amount transferred from the petitioner's SB Account: Rs.17,412/-.*
5. *ML/01/20040003 – Mortgage loan account – Amount transferred from petitioner's SB Account – Rs.23,536/-.*

It is also stated that all these transfers had been done absolutely without any authority and in a high handed fashion and against the basic norms of banking laws. It is further stated that the petitioner had deposited a cheque of M/s.G.I.T.Limited, Canara Bank, Nallakunta Branch, Hyderabad for a sum of Rs.4,96,000/- with the respondent No.1 herein and the respondent No.1 informed the petitioner that the said cheque has been returned, but the respondent did not return the said cheque to the petitioner for the reasons best known to them. It is also further stated that recently on 5-3-2005 the petitioner's son fallen down from the V Floor of the petitioner's residential apartment and met with severe injuries and at present he is undergoing treatment in Yasoda Hospital, Raj Bhavan

Road, Somajiguda, Hyderabad and the petitioner had given a cheque to the Hospital Authorities and the Hospital Authorities informed the petitioner that the said cheque was bounced. It is further stated that immediately the petitioner approached the respondent No.1 and enquired with regard to the bouncing of the cheque as he was having sufficient funds in his account. It is also stated that the petitioner after knowing the fact that the amounts mentioned above have been transferred to various other accounts, requested the respondent No.1 to refund the amount which was transferred to the other accounts and also requested to return back the cheque deposited by the petitioner, for which the respondent No.1 neither complied with the request nor any explanation given by them and as such the petitioner constrained to approach this Court for seeking appropriate reliefs. It is also stated that it may not be out of place to mention that the petitioner gave a representation dt.9-3-2005 to the respondent No.2 however no action had been taken upon the representation given by the petitioner.

3. A counter affidavit had been filed by the respondent No.s 1 and 2. It is stated that *the Writ Petition itself is not maintainable. It is also stated that it is true that the petitioner is having Savings Bank A/c. bearing No.506852 and an amount of Rs.4,02,434/- was lying to his credit as*

on 1-3-2005. It is further stated that it is false to stated that without any permission from the petitioner and without issuing any show cause notice and to his utter surprise and astonishment and without any information to the petitioner, the bank transferred the said amount of Rs.4,02,434/- to the accounts detailed in para 2 of his affidavit namely the current account of Roopa Informatics Limited, his housing loan account and clean loan account of his wife Rajanisri and mortgage loan account of the petitioner. It is stated that it is also incorrect to state that the petitioner is not liable to pay the amounts in those accounts. It is also further stated that as per petitioner's instructions only, the amount lying in his Savings Bank account were transferred to the loan accounts detailed above towards repayment of the amounts due to their Bank. It is also stated that the petitioner was liable to pay the amount due in the current account of M/s.Roopa Informatics Ltd., as he promised to pay the amount due to their bank and further the petitioner himself authorized the bank to transfer the said amount to that account and the petitioner also confirmed the said transfer of amount by the Bank vide letter dt.10-3-2005 stating that he cleared the TOD on 1-3-2005 in the loan account of M/s.Roopa Informatice Ltd., and also made part payments in his

Housing Loan account, Mortgage Loan account and Clean Loan account of Smt.Rajanisree by transfer of the amount lying to his credit in his Savings Bank Account and as such there can be no surprise and astonishment to the petitioner relating to transfer of the amount to the extent of Rs.4,02,434/- from the Savings Bank Account of petitioner on 1-3-2005 by their Branch for the reasons mentioned above. It is also further stated in para 6 of the counter affidavit that it is absolutely incorrect to state that a sum of Rs.4,02,434/- has been transferred from the petitioner's S.B.Account to the loan accounts detailed above without any authority and in high handed fashion and against the basic norms of banking laws. It is further stated that it is a matter of record that the petitioner had deposited a cheque issued by M/s.GIT Limited drawn on Canara Bank, Nallakunta Branch, Hyderabad for a sum of Rs.4,96,000/- with their bank and the said cheque was returned assigning the reason "insufficient funds" and the same was intimated to the petitioner but it is incorrect to state that the said cheque was not returned to the petitioner. It is also stated that the petitioner in fact acknowledged having received the said cheque from their Bank and the petitioner made a false allegation that the said cheque was not received by him. It is also further stated in para 6 that the averments made in para 4 in

regard to the unfortunate incident took place on 5-3-2005 does not have any relevancy to the issue raised by the petitioner in this Writ Petition and it appears that these averments are made only to draw sympathy from this Court and the said incident took place subsequent to transfer of the funds from his S.B.Account. It is also stated that the petitioner is estopped from raising the issue that the amounts lying in his account are transferred to various loan accounts since the said transfer was made by the bank officials with the consent of the petitioner and he confirmed the same vide his letter dt.10-3-2005 and furthermore, the bank can exercise a general lien in respect of the amounts lying to his credit with the bank as the petitioner is liable to pay in other accounts as borrower and also as a guarantor in the aforementioned accounts noted in para 2 of his affidavit. It is stated that the said transfer was made with the knowledge of the petitioner and with his consent and he confirmed the said transfer of amounts vide his letter dt.10-3-2005 even otherwise the bank is having a right to do so as per Section 172 of the Contract Act to exercise general lien. It is further stated that if the petitioner had given a cheque to the Hospital Authorities without having funds, he should have made alternative arrangements and for that he cannot find fault

with the bank's action in transferring these funds for payment of his legitimate liabilities to the bank in the aforementioned accounts. It is also further stated that once the amounts were transferred to various loan accounts, the bank does not have any right to retransfer or refund the amounts to his savings bank account even if the petitioner was in need of money for some exigencies. It is also stated that relating to representation dt.9-3-2005, the petitioner was orally informed that his request cannot be acceded to.

4. In the rejoinder affidavit filed it is stated that *the respondents had transferred the funds without the consent in writing and without intimation and several further facts had been narrated in para 4 of the reply affidavit. It was also further stated that the respondents had simply mentioned that it is false but they had not submitted any documentary proof before this Court to show that the petitioner had given consent to them to transfer the said amount. It is also stated that mentioning that by the instructions of the petitioner only they have transferred the amounts are not sufficient for them but they have to submit sufficient proof to show that the petitioner has given instructions to them to transfer the amounts from his account and as such they have transferred the amounts without any instructions from the*

petitioner. It is further stated that the respondent by mentioning some other document which was given by the petitioner with regard to some other property and with regard to some other TOD, they have produced in this case and even upon perusal of the said letter, there is not even a single whisper of the petitioner to transfer the amount of Rs.4,02,434/- from his account. It is also further stated that even the petitioner had given such consent in the said letter on 10-3-2005, the respondent cannot transfer the said amount on 1-3-2005 itself and from this fact alone it will be crystal clear that they have transferred illegally without any consent of the petitioner and now to fill up their lacunas, they have tried to show some proof which was given by the petitioner much later than 1-3-2005 i.e., on 10-3-2005 that too in some other property. It is also stated that further cheque deposited by the petitioner for a sum of Rs.4,96,000/- issued by M/s.GIT Limited was not returned to the petitioner and further the Bank has created a forged document showing that the petitioner has received the said cheque which can be easily identified from the said document from the signature of the petitioner as the petitioner had never signed in such a manner which shows that the said document has been created for the purpose of hiding their lapses and thus

they have not returned the cheque to the petitioner and further more they are trying to bring before this Court that they have returned the cheque to the petitioner by submitting a false document that too forged one. The averments made in the counter affidavit further also had been denied in the reply affidavit.

5. In the light of the respective stands taken by the parties and also in the light of the letters placed before this Court along with the counter affidavit of respondents 1 and 2, this Court is of the considered opinion that the petitioner is not justified in making such complaint as against respondents 1 and 2. Hence, this Court does not se any valid reason to grant any relief whatsoever and accordingly, the Writ Petition is dismissed. But, however, in the peculiar facts and circumstances, no order as to costs.

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Justice P.S.Narayana

18th September, 2007

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